

8/8/2011

Dear Michigan Supreme Court:

I can't understand what possible benefit the proposed change to Rule 6.001, which eliminates the right to discovery at preliminary examinations, would have. The preliminary examination is a vital procedural protection in the felony criminal process, so why would we want to water it down by making it occur without discovery? We wouldn't!

The proposed amendment would necessitate holding virtually all preliminary examinations where discovery was withheld, for fear of having a client bound over on a waiver where there is no ostensible basis for a bind over.

It's bad enough that sometimes defense attorneys get discovery the day of the preliminary examination, and judges won't adjourn for a meaningful review of the discovery. Now you are proposing to arm the prosecution and judges that are not sympathetic to a defendant's sixth amendment confrontation rights, that is, to confront witnesses and what the witnesses have said about them, (ie, the right to review discovery before hand), with an absolute trump card "Counselor, you have no RIGHT to discovery at a preliminary exam."

I am having a hard time understanding the benefit of this proposed amendment. Perhaps if someone comments in favor of it I will be able to then counter. Short of that, I don't see any benefit to the proposed change, and I see it as severely undermining the right of criminal defendants facing felony charges. As such, I ask that you refrain from adopting this proposed amendment.

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